

Randy McClement
Mayor



Alderman
Kelly M. Russell
President Pro Tem
Michael C. O'Connor
Philip Dacey
Joshua Bokee
Donna Kuzemchak

April 13, 2018

via email to opengov@oag.state.md.us.

State of Maryland
Open Meetings Compliance Board
c/o Ann MacNeille
Assistant Attorney General
Counsel, Open Meetings Compliance Board
200 St. Paul Place
Baltimore, Maryland 21202

Re: March 28, 2018 Complaint of Peter Samuel

Dear Open Meetings Compliance Board Members:

The Open Meetings Compliance Board (OMCB) has received a complaint (the "Complaint") by Mr. Peter Samuel alleging violations of the Open Meetings Act (the "Act") by the Board of Aldermen. Please accept this letter as the City's response to the Complaint.

BACKGROUND

The Complaint relates to the issuance of a certain Request for Proposals (RFP). Under the City's Charter, the Board of Aldermen may "establish regulations relating to the City's purchase of supplies, materials, services, or equipment, including provisions relating to competitive bidding." Charter, Art. VII, § 15. Pursuant to such authority, the City has adopted, via Resolution No. 13-36, a Purchasing Policies and Procedures Manual (the "Manual"). In 2014, in accordance with the Manual, the City issued RFP #14-J, seeking proposals for "a full-service hotel and conference center to be located in Downtown Frederick, Maryland." On December 28, 2015, through the approval of a Memorandum of Understanding in an open meeting, the Board of Aldermen formally selected Plamondon Hospitality Partners as the developer of the downtown hotel and conference center.

RESPONSE

The Complaint alleges that the issuance of RFP #14-J "without an open public meeting of the [Mayor and Board of Aldermen]" violated a certain provision of the Manual. The provision at issue is as follows:

H. REQUISITION APPROVAL AND SIGNING AUTHORITY

Purchase Requisitions, Contracts or Agreements that obligate the City to pay for a service or product will be approved and signed by the Purchasing Manager, Director of Budget and Purchasing, Finance Director or Mayor, or their designees.

For Purchase Requisitions, Contracts or Agreements over \$49,999.99, the solicitation document along with all backup, shall be submitted to the Purchasing Manager for review. The item with supporting material shall be placed on a public meeting agenda for approval by the Mayor and Board of Aldermen. Please note that all purchasing requests, including those on the Consent Agenda, must go through the Purchasing Department first. The Purchasing Department is responsible to see that such requests are submitted for review by the Legal Department. Manual, p. 36.

It is apparent from the plain language of the above provision that it pertains to the approval of a contract or a purchase requisition. It has no application to the issuance of an RFP. The "solicitation document" is referenced in the context of the materials that must accompany the purchase requisition or contract through the approval process. Mr. Samuel's allegation that the Manual requires the Board of Aldermen to approve the issuance of an RFP is incorrect. It is worth noting that in Fiscal Year 2018 to date, the City has issued 23 RFPs. Likewise there were 25 issued in FY 17 and 30 issued in FY 16. Not one of these RFPs was approved by the Board of Aldermen. Mr. Samuel's implication that RFP # 14-J is being treated differently than any other RFP is invalid.

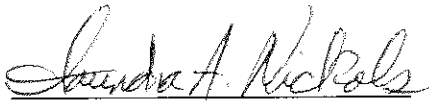
In any event, none of the foregoing has anything whatsoever to do with the Act. Even if it were true that the Manual required the Mayor and Board of Aldermen to approve the issuance of an RFP and they failed to do so, there would be no violation of the Act. The City's compliance or alleged lack of compliance with its own policies is outside the scope of the Act and thus outside the purview of the OMCB. To the extent that the Complaint may imply that the Board of Aldermen did approve the issuance of an RFP but did not conduct a meeting for such purpose, again, the Act is inapplicable. The Act does not govern whether a particular public body must conduct public business in a meeting. *See* 94 Op. Att'y Gen. 161 (2009). ("[O]ur longstanding advice has been that the Open Meetings Act does not specify when a public body must hold a meeting; it simply establishes rules that apply when a meeting occurs.")

The Complaint makes brief reference to "several closed meetings" of the Mayor and Board of Aldermen about RFP-#14J. This reference is not an adequate description of "the action of the public body, the date of the action, and the circumstances of the action", as required by § 3-205 of the Act, and therefore it is difficult for the City to address the alleged violation. Nevertheless, the City denies holding any secret closed meetings concerning RFP #14-J or any other topic. See Affidavit of Richard Griffin, attached as Exhibit A.

CONCLUSION

The City has complied in all respects with its own purchasing policies, and regardless, that is not a matter properly before the OMCB. Mr. Samuel has not alleged any violation of the Act with sufficient specificity to allow the City to respond in a meaningful fashion. In any case, the City denies holding any secret meetings with respect to RFP-#14J or otherwise. Based on the foregoing, the City respectfully asks that the OMCB find that there has been no violation of the Act as alleged in the Complaint.

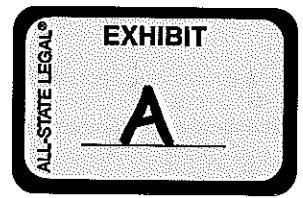
Sincerely,

A handwritten signature in cursive script that reads "Sandra A. Nickols". The signature is written in black ink and is positioned above the printed name and title.

Sandra A. Nickols
City Attorney

Attachment

cc: Mr. Peter Samuel



AFFIDAVIT OF RICHARD G. GRIFFIN

1) I, RICHARD G. GRIFFIN, am over eighteen years old, and am competent to testify in the matters set forth herein.

2) I am the Director of Economic Development for The City of Frederick. I have served in that capacity since 2002.

3) I have neither convened nor participated in any meeting of the Board of Aldermen regarding the issuance of RFP #14-J or any other matter related to plans for a hotel and conference center in downtown Frederick that was not conducted in full compliance with the Maryland Open Meetings Act.

I solemnly declare and affirm under penalties of perjury that the contents of the foregoing affidavit are true and accurate and based upon my personal knowledge.

4-3-18
Date


Richard G. Griffin
101 N. Court Street
Frederick, MD 21701